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LETIZIA TAGLIAFIERRO
INSPECTOR GENERAL

October 4, 2019

Michael K. Rozen, Esq.
Chair
New York State Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: NYS IG 0352-089-2019

Dear Chair Rozen:

On January 30, 2019, Seth Agata, then executive director of the New York State Joint Commission on Public Ethics (JCOPE), referred to the Offices of the New York State Inspector General an allegation that confidential information discussed in an executive session of the January 29, 2019 JCOPE meeting was wrongfully disseminated.¹ Specifically, it was alleged that information regarding how certain JCOPE members voted in executive session on a matter before JCOPE was improperly leaked.

Based on this allegation and referral, the Inspector General's Office commenced an investigation. As set forth below, the investigation was unable to substantiate whether or by whom confidential information was in fact improperly disclosed.

¹ Due to her previous role as executive director of JCOPE from 2013-2015, Inspector General Letizia Tagliafierro was recused as a matter of course from any involvement in this investigation.

As you know, JCOPE was established pursuant to New York State Executive Law section 94 and, among other things, is charged with investigating potential violations of the State's ethics laws.

Members of JCOPE are subject to laws regarding confidentiality, including Executive Law § 94 and Public Officers Law § 74, and specifically, any information obtained or matters discussed in executive session are prohibited from disclosure by Executive Law § 94(9-a)(b). Former JCOPE Executive Director Seth Agata confirmed this legal prohibition in testimony to the Inspector General, noting that matters discussed in executive session, including "whether an investigation is being conducted" or "whether a matter was voted on or a vote itself," are deemed confidential.

Once appointed to JCOPE, commissioners receive a packet of information, which includes relevant laws, regulations, and recusal policies, as well as JCOPE's Code of Conduct, which in part reiterates the legal obligations and responsibilities regarding confidentiality outlined in Public Officers Law § 74 and Executive Law § 94. Commissioners are also required upon appointment to sign an acknowledgement to comply with New York State Public Officers Law and a Statement of Non-Disclosure.

Upon receipt of this allegation, the Inspector General's Office conducted an investigation including interviews, document review, and analyses. Additionally, the Inspector General's Office solicited affirmations under penalty of perjury from JCOPE staff and commissioners in attendance at the executive session of JCOPE's January 29, 2019 meeting, which included, among other representations, that they did not disclose information regarding any matter discussed in the January 29, 2019 executive session.

Ultimately, the investigation was unable to substantiate whether or by whom confidential information was in fact improperly disclosed. Specifically, the referral from JCOPE set forth general allegations with no supporting facts; no individual was able to provide firsthand knowledge of any leak or potential perpetrator; and any information provided was admittedly based on supposition and speculation. In addition, all JCOPE staff and commissioners who would have been privy to confidential information in executive session denied disclosing such confidential information. Further, no JCOPE commissioner or staff member proactively reported to the Inspector General's Office any firsthand knowledge of whether and by whom a leak of confidential information occurred, as would be obligated under Executive Law 4-A, § 55.

The investigation, however, did uncover areas in which JCOPE can take further steps to prevent any potential unauthorized disclosure.

First, the nondisclosure agreement (NDA) each commissioner is required to sign has evolved over time from a short, general NDA to a more comprehensive and specific version, and there is no requirement to regularly update and re-submit the NDA. To ensure uniformity and accountability, the Inspector General's Office recommends that all commissioners sign the most recent, comprehensive NDA and that JCOPE implements a mandatory annual re-submission of this NDA.

Second, several days before each JCOPE commissioners' meeting, commissioners and certain senior staff are provided a briefing book containing the agenda for the meeting, descriptions of the matters to be discussed, and the minutes of the prior meeting. Currently, commissioners, at their discretion, may retain this briefing book or return it to JCOPE. To ensure the integrity of the process, the Inspector General's Office recommends that commissioners and relevant staff be required to return their briefing books at the conclusion of each meeting and be reminded that the contents of the book may contain confidential information that should not be shared either before or after the meeting without express authorization from JCOPE.

Finally, the investigation revealed that there have been occasions when new commissioners have not received full training regarding their roles, responsibilities, and legal and ethical obligations prior to participating in JCOPE meetings. JCOPE should ensure that all commissioners and staff members are fully trained on all their obligations and responsibilities, including regarding confidentiality, before attending any JCOPE meetings.

Please advise me of the action taken by JCOPE in response to these recommendations within 45 days of the date of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Spencer Freedman", followed by a long horizontal line.

Spencer Freedman
Executive Deputy Inspector General

Cc: Monica Stamm, Esq.
General Counsel